Lord Jim's *and* Hotel & Restaurant Employees and Bartenders Union, Local 2. Cases 20-CA-15570 and 20-CA-15793

January 22, 1982

DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND ZIMMERMAN

On May 14, 1981, Administrative Law Judge Jay R. Pollack issued the attached Decision in this proceeding. Thereafter, the General Counsel and Respondent filed exceptions and supporting briefs, and Respondent filed cross-exceptions and an answering brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,[1] and conclusions of the Administrative Law Judge and to adopt his recommended Order.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondent, Lord Jim's, San Francisco, California, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order.[2]

[1] Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

In adopting the conclusions of the Administrative Law Judge, we find it unnecessary to rely on his discussion of *Amoco Production Company*, 239 NLRB 1195 (1979), in view of the lack of any evidence to show that anyone other than the members of Bartenders Local 41, which was only one of the unions involved, was given any opportunity to vote on the merger.

[2] Member Jenkins would award interest on backpay in accordance with his dissent in *Olympic Medical Corporation*, 250 NLRB 146 (1980).

DECISION

STATEMENT OF THE CASE

JAY R. POLLACK, Administrative Law Judge: These consolidated cases were heard before me in San Francisco, California, on February 20 and March 9, 1981. The charge in Case 20-CA-15570 was filed by Hotel & Restaurant Employees and Bartenders Union, Local 2 (herein called the Union) on August 18, 1980, and a copy thereof was served on Lord Jim's (herein called Respondent) on August 19, 1980. On November 10, 1980, the Regional Director for Region 20 of the National Labor Relations Board issued a complaint and notice of hearing in Case 20-CA-15570 alleging that Respondent violated Section 8(a)(5) and (1) of the National Labor Relations Act, as amended, 29 U.S.C. Sec. 151, *et seq.*, herein called the Act. On November 18, 1980, the Union filed the charge in Case 20-CA-15793. Following investigation thereof, the Acting Regional Director issued a complaint and notice of hearing on December 17, 1980, alleging that Respondent violated Section 8(a)(3) and (1) of the Act. On that same date, the Acting Regional Director ordered that the two cases be consolidated for purposes of hearing.

The Issues

On March 9, 1981, the second day of the hearing, I granted Respondent's motion to dismiss the complaint alleging a violation of Section 8(a)(5) of the Act (Case 20-CA-15570) on the ground that the General Counsel and the Union had failed to prove a *prima facie* case. The basis of that ruling will be set forth herein. The principal issues presented for decision in Case 20-CA-15793 are as follows:

1. Whether Respondent violated Section 8(a)(1) and (3) of the Act by discharging its employee Regan Foiles on October 21, 1980.

2. Whether Respondent violated Section 8(a)(1) of the Act by interrogating Foiles regarding her union sympathies; by instructing Foiles to disassociate herself from the Union; by creating the impression that Foiles' union activities were under surveillance by Respondent; and by threatening Foiles with physical harm because of her union sympathies.

All parties were given full opportunity to appear, to introduce relevant evidence, to examine and cross-examine witnesses, to argue orally, and to file briefs. Upon the entire record, from my observation of the demeanor of the witnesses, and having considered the post-hearing briefs of the parties, I make the following:

FINDINGS OF FACT AND CONCLUSIONS

I. JURISDICTION

Respondent is a sole proprietorship of Spiro Tampourantzis[1] engaged in the operation of a bar and cocktail lounge in San Francisco, California. In the course and conduct of its business, Respondent annually derives gross revenues in excess of $500,000 and annually purchases directly from suppliers located outside the State of California goods and materials valued in excess of $5,000.

Accordingly, Respondent admits and I find Respondent to be an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

[1] The transcript contains various spellings of Tampourantzis' name. The spelling used herein is that given by Tampourantzis on the witness stand.

II. THE LABOR ORGANIZATION INVOLVED

The Union represents employees in the hotel and culinary trades in dealing with their employers for purposes of collective bargaining. The Union is a labor organization within the meaning of Section 2(5) of the Act.

The Failure To Prove a *Prima Facie* 8(a)(5) and (1) Violation

As discussed above, I granted Respondent's motion to dismiss the complaint in Case 20-CA-15570 alleging a violation of Section 8(a)(5) and (1) of the Act. In my view, the General Counsel and the Union had failed to prove an essential element of a *prima facie* case. The relevant complaint allegation reads as follows:

> Since an unknown date in the past, and at all times material herein, the Union has been designated exclusive collective-bargaining representative of Respondent's employees in [an appropriate unit].[2] . . . and since that time the Union has been recognized as such representative by Respondent. Such recognition has been embodied in successive collective bargaining agreements, the most recent of which is effective by its terms for the period October 7, 1973 to October 31, 1980.

In support of this allegation, the General Counsel presented evidence that on October 7, 1973, Respondent entered into an agreement with six labor organizations[3] covering the terms and conditions of employment of its bartenders and cocktail waitresses. These six labor organizations have ceased to exist. Prior to 1975, Waiters and Dairy Lunchmen's Union No. 30 and Waitresses & Cafeteria Employees Union No. 48 merged into Dining Room Employees Union, Local 9. In 1975, the remaining five labor organizations were merged into a single labor organization, the Union herein. The five labor organizations went out of existence and a new labor organization, the Union, was formed. Although not pleaded in the complaint, the General Counsel contends that the Union is a successor to the six contracting unions. Evidence was presented that members of Bartenders, Local 41, were given notice of and voted in an election relating to the merger. There was no evidence that the employees of Respondent were members of Bartenders, Local 41, were given notice of the election, or voted in the election. Further, there was no evidence that cocktail waitresses (the only other contract classification in which Respondent employed employees and who comprised half of the bargaining unit), whether union members or not, participated in any election relating to the merger. To the contrary, I was requested to take, and took, judicial notice of the case of *Karl Kahn, et. al.* v. *Hotel and Restaurant Employees, etc.*, 469 F. Supp. 14 (N.D. Cal. 1977), affd. *per curiam* 597 F.2d 1317 (9th Cir. 1979), in which the district court found that the instant merger was unilaterally ordered by the president of the Hotel and Restaurant Employees' and Bartenders' International Union and that there *was no vote* on the merger.

In deciding whether a union is a successor to another union in any particular unit, the Board "looks to a number of factors, including whether democratic procedures have been followed in any vote on affiliation or merger, whether the new organization has succeeded to the assets and liabilities of the predecessor, whether the employees in the bargaining unit have had an opportunity to register their desires, and whether there is a continuity in the leadership and representation of the employees in the bargaining unit." See, e.g., *Local 294, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Gene Graham Ford, Inc.)*, 188 NLRB 515, 518 (1971). The Board has indicated that whether the employees in the unit have had an opportunity to pass on the change of representative is "the primary concern" in such cases. *Newspapers, Inc., Publishers of the Austin American and the Austin Statesman*, 210 NLRB 8, 9, fn. 4 (1974), affd. 515 F.2d 334 (5th Cir. 1975). See also *William B. Tanner Company (formerly Pepper & Tanner, Inc.)*, 212 NLRB 566, 567 (1974), enforcement denied 517 F.2d 982 (6th Cir. 1975), and *Factory Services, Inc.*, 193 NLRB 722 (1971).

In *Jasper Seating Company, Inc.*, 231 NLRB 1025 (1977), the Board refused to find a successor union based on the fact that nonmembers of the union were not given an equal unqualified opportunity to participate in the affiliation vote. In *Amoco Production Company*, 239 NLRB 1195 (1979), remanded 613 F.2d 107 (5th Cir. 1980), the Board overruled *Jasper Seating* stating:

> The fact that union merger or affiliation votes are basically internal organizational matters, coupled with the employees' opportunity to exercise their right to choose whether to participate or to refrain from engaging in concerted activity, persuades us to find that union affiliation votes limited to union members are valid.
>
> An affiliation is the alignment or association of a union with a national or parent organization. An affiliation does not create a new organization, nor does it result in the dissolution of an already existing organization.

Thus, the Board expressly distinguished the creation of a new labor organization from an internal union matter such as an affiliation vote.[4] Where a new labor organization is formed and the existing bargaining representative is dissolved, the rights of all unit employees and not just union members are affected. Such a change goes beyond internal matters and affects representative status. See, e.g., *Independent Drug Store Owners of Santa Clara*

[2] The appropriate unit alleged in the complaint is as follows: All employees employed by Respondent at 1500 Broadway, San Francisco, California, who are employed in the job classifications listed in the Independent Restaurant & Tavern Agreement effective October 7, 1973; excluding all other employees, guards and supervisors as defined in the National Labor Relations Act.

[3] The six unions were waiters and Dairy Lunchmen's Union No. 30; Waitresses & Cafeteria Employees Union No. 48; Bartenders, Local 41; Cooks, Pastry Cooks and Assistants Union, Local 44; Miscellaneous Culinary Employees Union, Local 110; and Hotel, Motel, Club and Service Workers Union, Local 283.

[4] See also then Member Truesdale's concurring opinion at 1196.

County, 211 NLRB 701 (1974), enfd. 528 F.2d 1225 (9th Cir. 1975).

In *Amoco*, the Board restated the principle that affiliation procedures must meet due process requirements; for example, proper notice to all members, an orderly vote, and some reasonable precautions to maintain the secrecy of the ballot. In the instant case, the merger ordered by the president of the International Union does not meet those requirements. Further, the only evidence of an election showed that members of the Bartenders Union voted in favor of the merger. There was no evidence that members of the other labor organizations voted in any election. Thus, even if an election limited to union members were sufficient, there would be insufficient evidence in this case to find proper successorship.

The General Counsel and the Union have failed to prove by any other means that Respondent was obligated to bargain with the Union. In his post-hearing brief, the General Counsel contends that Respondent has recognized the Union and complied to some extent with the 1973 collective-bargaining agreement. However, no evidence in support of this contention was offered. Evidence was presented that in 1977 the trust funds[5] brought suit against Respondent seeking payment pursuant to the provisions of the 1973 bargaining agreement. In that suit, a settlement was reached by the assignee of the trust funds and Respondent. That evidence was presented with the express purpose of showing attempts by the Union to enforce the agreement and, therefore, that the Union had not abandoned its representative status. However, the settlement was not offered and could not be used as an admission that Respondent had recognized the Union or an admission that Respondent had a bargaining agreement with the Union. See Federal Rules of Evidence, Rule 408.

Accordingly, for the failure to prove a *prima facie* case, the recommended Order will provide for dismissal of the complaint in Case 20-CA-15570.

III. THE ALLEGED UNFAIR LABOR PRACTICES IN CASE 20-CA-15793

Regan Foiles first worked for Respondent as a cocktail waitress in 1974. She was fired in 1974 and rehired 2 years later. Thereafter, Foiles, a student, worked for Respondent from time to time amounting to 4 or 5 months a year. Foiles voluntarily quit on these occasions and was always permitted to return when she needed work. In early September 1980,[6] Foiles returned to work for Respondent as a cocktail waitress. Her regularly scheduled hours were 10 a.m. to 6 p.m., Saturdays and Sundays. Foiles also worked as a fill-in for 1 weekday each week.

Foiles was not a member of the Union. She testified that in early October she had a conversation with a bartender in which she suggested that the employees would have better working conditions and more job security "with the Union."[7] in mid-October, Foiles had a similar conversation with Rhonda Riley, a cocktail waitress and friend of Tampourantzis.[8] Shortly after her conversation with Riley, on October 16, Foiles was questioned by Tampourantzis concerning the Union. Tampourantzis, who was talking to Riley, called Foiles over to him and asked her how she voted in the union election. Foiles asked if there had been an election and Tampourantzis answered asking Foiles how she would vote if there was an election. Foiles then asked Tampourantzis if there was going to be an election. Tampourantzis said there had already been an election and told Foiles to keep out of the Union and to "keep away from the whole thing." Tampourantzis was not questioned about this conversation and Riley did not remember the conversation. As indicated above, Foiles' testimony is credited.

I find that Tampourantzis' questioning of Foiles tended to convey displeasure with union activity and thereby tended to discourage such activity. See *PPG Industries, Inc., Lexington Plant, Fiber Glass Division*, 251 NLRB 1146 (1980). Accordingly, I find that Respondent violated Section 8(a)(1) of the Act. Further, Tampourantzis' instruction to Foiles not to have anything to do with the Union unlawfully restricted Foiles' union activities and, therefore, violated Section 8(a)(1) of the Act. *Interstate Transport/Security Division of PJR Enterprises, Inc.*, 240 NLRB 274 (1979).

On October 21, Foiles, who was not working that day, went into Respondent's bar to use the pay telephone. Tampourantzis approached Foiles and told her that she had betrayed him. Tampourantzis also said that Foiles had gotten him in trouble with the Union. He then told Foiles that she was fired and that he did not want her in the bar any more. Tampourantzis said he felt like hitting her and that he should slap her face. Foiles said she would talk to him again, when he was sober. Tampourantzis again told Foiles to leave the bar. Foiles then left the bar and went home.[9]

Tampourantzis testified that he had been at the bar for a day and a half prior to this incident. However, at the

[5] San Francisco Culinary, Bartenders and Service Employees Welfare Fund and San Francisco Culinary, Bartenders and Service Employees Pension Plan.

[6] Unless otherwise stated, all dates hereinafter refer to calendar year 1980.

[7] At the time of this conversation, the charge in Case 20-CA-15570 was pending but the complaint had not yet issued. On August 6, Respondent filed a petition in Case 20-RM-2319 seeking a Board-conducted election to resolve the question of union representation. On November 5, the Regional Director dismissed the petition based on the complaint in Case 20-CA-15570. On December 29, the Board reversed the Regional Director and reinstated the petition in Case 20-RM-2319.

[8] Foiles testified in a candid and straightforward manner and, therefore, her testimony is credited. Riley testified that she did not recall this conversation, but did not deny that the conversation occurred.

[9] Tom Glendenning, employed by Respondent as a bartender, was present during this conversation. At the hearing, counsel for the General Counsel represented that he had subpenaed Glendenning but that Glendenning had failed to appear to testify. Respondent, concurrent with its post-trial brief, moved to strike, *inter alia*, these representations on the ground that proof of service was not established. Further, Respondent moved that I draw an adverse inference against the General Counsel for not calling Glendenning to corroborate Foiles' testimony.

Glendenning, apparently still employed by Respondent, was equally available to Respondent to refute Foiles' testimony as he was to the General Counsel to corroborate it, but Respondent also failed to call him as a witness. Under such circumstances, no inference should be drawn. See *Local 259, United Automobile, Aerospace, and Agricultural Implement Workers of America (Atherton Cadillac, Inc.)*, 225 NLRB 421, 422, fn. 3 (1976).

time of the incident, Tampourantzis was suffering from insufficient sleep and too much drink. For these reasons, Tampourantzis' was unable to recall what he said while discharging Foiles. However, while testifying, Tampourantzis' moved his arms in such a manner as to confirm the threatening manner described by Foiles in her testimony. Foiles' testimony regarding this incident is credited.

I find that Tampourantzis remarks in discharging Foiles created the impression of surveillance of employees' union-related conversations and/or other union activities. Accordingly, I find that Respondent violated Section 8(a)(1) of the Act. Further, Tampourantzis' threatening statements, in the presence of employee Glendenning, tended to threaten employees that Respondent would resort to force to halt union activities among its employees. By such conduct, Respondent violated Section 8(a)(1) of the Act.

Respondent's defense is that it discharged Foiles because, during the week prior to her discharge, Foiles spent 10 minutes talking to another employee, leaving Riley to wait on all the customers. On the evening in question, Foiles, believing that no waitress was scheduled to relieve her, called a waitress named Betty to work as her relief. Unbeknownst to Foiles, Tampourantzis had called another waitress to work that shift. Foiles was directed by Tampourantzis to tell Betty that she could not work. Thus, when Betty arrived, Foiles told her that she could not work and would not be paid showup time. Understandably, Betty was upset and Foiles tried to explain the mixup to her. At the tail end of this conversation Foiles suggested that, if the employees were represented by the Union, Betty would have been paid showup time.

Riley testified that Foiles, who was normally a very good employee, was talking with Betty for 10 minutes, while Riley had to wait on Foiles' customers.[10] Riley was displeased by this fact and mentioned it to her friend, Susan O'Neil, who was also a close friend of Tampourantzis. Riley testified that on October 18 she had drinks with O'Neil and at that time mentioned that Foiles had been talking to Betty about the Union, while Riley had to wait on her customers. O'Neil testified that on October 19 she repeated this conversation to Tampourantzis. O'Neil testified that she told Tampourantzis that Foiles had talked to Betty about the Union, while Riley had to wait on Foiles' customers. Tampourantzis denied that O'Neil mentioned the Union to him. Tampourantzis' denial is not credited.

Tampourantzis testified that, after he learned that Foiles was talking instead of working he decided to fire her. He fired Foiles on October 21, the first time he saw her after that decision. As discussed above, he was not able to recall the conversation and Foiles' version of the discharge is credited. Tampourantzis testified that he has fired many other employees for breaking rules. However, he said he gave employees many chances and that it was only after they continued to break his rules that he fired them.[11] No evidence was offered that Foiles had ever broken a rule before. Foiles had never received a warning or reprimand during her employment with Respondent. Further, from the credited testimony of Foiles and Riley it appears that Tampourantzis knew that Betty was the same waitress who Foiles had called in to work as her relief. Thus, Tampourantzis knew that Foiles had a legitimate reason for talking to Betty. Foiles credibly testified that Tampourantzis was present in the bar during this conversation.[12] Finally, while Tampourantzis testified that he investigates complaints against employees to ascertain whether the complaints are true, he took no such action with respect to Foiles. Tampourantzis did not question either Foiles or Riley about this incident.

The critical issue herein is Respondent's motive for discharging Foiles. Accordingly, the General Counsel must first make a *prima facie* showing sufficient to support the inference that an intent to discourage union membership was a "motivating factor" in Respondent's decision. Upon such a showing, the burden shifts to Respondent to demonstrate that the same action would have taken place even in the absence of such an intent. See *Wright Line, a Division of Wright Line, Inc.*, 251 NLRB 1083 (1980).

Clearly, the General Counsel has established a *prima facie* case. On October 16, Foiles was instructed not to have anything to do with the Union. On October 21, she was told that she had betrayed Respondent and gotten Tampourantzis in trouble with the Union. She was threatened with physical harm and discharged. The only conclusion to be drawn from such circumstances is that Foiles was discharged for her union sympathies. It is no defense that Foiles did not join the Union or engage in union activities of any substance. It is violative of Section 8(a)(3) of the Act to discharge an employee in order to prevent or discourage such activities.

Respondent has failed to rebut this *prima facie* case. The evidence presented in Respondent's defense establishes that, upon hearing that Foiles discussed the Union with Betty, Tampourantzis decided to terminate Foiles. He had known that Foiles had a legitimate reaaon to talk to Betty about the scheduling mixup that evening. In fact, Tampourantzis had told Foiles to inform Betty that she (Betty) was not needed that evening. Thus, all Tampourantzis learned from O'Neil was that Foiles discussed the Union with Betty. In discharging Foiles, Tampourantzis made no reference to the alleged reason for the discharge to any other work transgression. He only said that Foiles had betrayed him and gotten him in trouble with the Union. Further, no opportunity to explain the incident was afforded Foiles, in spite of Tampourantzis' alleged practice of giving employees such opportunities prior to discharging them. Finally, there was no evidence that Foiles had ever before violated any of Respondent's rules. According to Tampourantzis, he gave

[10] Riley testified that, except for the evening in question, Foiles "always worked, she never used to fool around or talk to customers when she was working."

[11] Tampourantzis testified that he fired employees after he gave them "ten chances." He also testified that he gave some employees "twenty chances." He did not deny Foiles' testimony that she was never warned or reprimanded during her employment with Respondent.

[12] Riley's testimony to the contrary, that Tampourantzis had left the bar momentarily, is not credited.

other employees "five, ten or twenty chances" before firing them.

In sum, I find that Foiles' union sympathies were a "motivating factor" in Respondent's decision to fire her and that Respondent's defense was not a true reason for firing Foiles. *A fortiori*, Respondent has failed to establish that Foiles would have been discharged in the absence of her union sympathies. Therefore, I find that Respondent has violated Section 8(a)(3) and (1) of the Act by discharging Foiles for such unlawful motive.

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent has engaged in unfair labor practices in violation of Section 8(a)(1) of the Act by questioning an employee about her union sympathies; by directing an employee to disassociate herself from the Union; by creating the impression of surveillance of its employees' union conversations and activities; and by threatening an employee with physical harm because of her union activities or union sympathies.

4. Respondent has engaged in unfair labor practices in violation of Section 8(a)(3) and (1) of the Act by unlawfully discharging Regan Foiles in order to discourage union activities among its employees.

5. The unfair labor practices specifically found above are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

6. Respondent has not engaged in unfair labor practices in violation of Section 8(a)(5) of the Act as alleged in the complaint in Case 20-CA-15570.

THE REMEDY

Having found that Respondent engaged in certain unfair labor practices, I shall recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the purposes of the Act.

Respondent shall be required to offer Regan Foiles reinstatement to her former position of employment or, if that position no longer exists, to a substantially equivalent position, without prejudice to her seniority or other rights and privileges. Respondent shall be required to make Foiles whole for any loss of earnings she may have suffered by reason of her unlawful termination, with backpay to be computed on a quarterly basis, making deductions for interim earnings, *F. W. Woolworth Company*, 90 NLRB 289 (1950), with interest to be computed in the manner prescribed in *Florida Steel Corporation*, 231 NRLB 651 (1977). See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

Upon the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the act, I hereby issue the following recommended:

ORDER[13]

The Respondent, Lord Jim's, San Francisco, California, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Questioning employees concerning their union activities or union sympathies.

(b) Directing employees to disassociate themselves from Hotel & Restaurant Employees and Bartenders Union, Local 2, or any other labor organization.

(c) Creating the impression of surveillance of its employees' union conversations or union activities.

(d) Threatening employees with physical harm because of their union activities or union sympathies.

(e) Discharging employees in order to discourage membership in or activities on behalf of the Union or any other labor organization.

(f) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action which is necessary to effectuate the purpose of the Act:

(a) Offer to reinstate Regan Foiles to her former position of employment or, if that position no longer exists, to a substantially equivalent position, without prejudice to her seniority or other rights and privileges, and make her whole for any loss of pay and benefits she may have suffered as a result of the discrimination against her, in the manner set forth above in the section of this Decision entitled "The Remedy."

(b) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(c) Post at its San Francisco, California, facilities copies of the attached notice marked "Appendix."[14] Copies of said notice, on forms provided by the Regional Director for Region 20, after being duly signed by Respondent's authorized representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for Region 20, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

[13] All outstanding motions inconsistent with this recommended Order hereby are denied. In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

[14] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

IT IS FURTHER ORDERED that the complaint in Case 20-CA-15570 be dismissed in its entirety.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

The Act gives employees the following rights:

To engage in self-organization
To form, join, or assist any union
To bargain collectively through representatives of their own choice
To engage in activities together for the purpose of collective bargaining or other mutual aid or protection
To refrain from the exercise of any or all such activities.

WE WILL NOT question employees concerning their union activities or union sympathies.

WE WILL NOT direct employees to disassociate themselves from Hotel & Restaurant Employees and Bartenders Union, Local 2, or any other labor organization.

WE WILL NOT create the impression of surveillance of our employees' union conversations or union activities.

WE WILL NOT threaten employees with physical harm because of their union activities or union sympathies.

WE WILL NOT discharge employees in order to discourage membership in or activities on behalf of the Union or any other labor oraganization.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL offer to reinstate Regan Foiles to her former position of employment or, if that position no longer exists, to a substantially equivalent position, without prejudice to her seniority or other rights and privileges, and WE WILL make whole Foiles for any loss of earnings she may have suffered by reason of our discrimination against her, plus interest.

LORD JIM'S